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ABSTRACT

Academic freedom and its impact on scholarship are considered in this University of Toledo's Honors Day address. As introduction, some significant points of the University's history that portray its commitment to academic freedom are cited, along with trends affecting academic freedom in the United States as a whole. It is suggested that academic freedom protects the right to explore controversial issues honestly, in the classroom and the laboratory. Two decades ago concern was mainly with loyalty oaths and speaker bans, measures adopted by the state legislatures in the 1950s to allay public apprehension about subversive activities on U.S. campuses. After the Kent State students were killed, one threat to academic freedom was legislation calling for dismissal of state university professors who were convicted of offenses on or off campus. Threats to academic freedom today are of a different type: (1) those involving restrictions imposed by the federal government; (2) those of private groups who from one side of the political spectrum challenge the right to teach freely in the classroom; and (3) those who on the other side challenge the right to speak freely on university campuses. (SW)

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THE UNIVERSITY OF TOLEDO

HONORS DAY ADDRESS

Robert M. O'Neil

May 13, 1987

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FOREWARD

The University of Toledo was very fortunate to have Robert M. O'Neil as its Honors Day speaker. An outstanding leader in higher education, Robert O'Neil became president of the University of Virginia and George M. Kaufman professor of law on September 1, 1985. He had served from 1980 until that time as president of the University of Wisconsin System.

A graduate of Harvard College and Harvard Law School, he also holds a master's degree in American history from Harvard and an honorary doctor of laws degree from Beloit College. After law school and a year as research assistant to Professor Paul Freund on the history of the U.S. Supreme Court, he served in 1962-63 as law clerk to Justice William J. Brennan, Jr. His teaching career began at the University of California-Berkeley where he was a member of the law faculty from 1963 to 1972. From 1970 to 1972 he was general counsel of the American Association of University Professors.

He entered administration as provost (later executive vice president) at the University of Cincinnati. In 1975 he became vice president of Indiana University in charge of the Bloomington campus. Since entering administration, he has regularly taught courses in constitutional and commercial law.

As president of the University of Wisconsin from 1980 to 1985, Robert O'Neil led a statewide system of 13 universities, 13 two-year centers and a comprehensive extension program.

He has published several books, including "Classrooms in the Crossfire" (1981), a study of legal and policy aspects of textbook and curricular censorship.

President O'Neil's focus on academic freedom and its impact on scholarship represents a most appropriate theme for this period in our history.

James D. McComas
President
The University of Toledo

It is both a pleasure and an honor for me to be a part of your Honors Day program. When the invitation came, I recalled my earlier visits to this University — one during the term of each of the previous two presidents, and extending back to the late 1960s. Today's return marks a most fitting opportunity to continue a happy relationship. I am delighted to take part in this program — and would at the start add my congratulations to those you have received and will be receiving from others on your singular accomplishments.

The nature of my two earlier visits here might be worth sharing with you this morning. My earliest mission to Toledo came in my role as a representative of the fledgling Council on Legal Education Opportunity. This program was created to encourage minority students who planned to become lawyers, at a time when barely 1 per cent of the bar in this country was black and other minorities were negligibly represented.

The University of Toledo Law School was one of the first successful applicants for a summer institute for minority students bound for the study of law. My visit was designed to confirm details of the upcoming program — actually the very day before going to Geneva for a six-month sabbatical supported by the Ford Foundation International Legal Studies program. Before I left the campus my hosts wanted to be sure I met with President Carlson, which I especially enjoyed doing. The summer institute was a success, and helped measurably to increase the number of minority lawyers in this region. In fact, by 1974 there were more black law students enrolled in accredited law schools than the total number of black attorneys admitted to practice across the country — a remarkable feat for this fledgling and rather modestly supported program.

The University of Toledo played a substantial role in that achievement — early evidence of the commitment of this University to equal opportunity and affirmative action. The role of the University's president was one that especially impressed me at the time, and enhanced the pleasure I felt at seeing his name on the University's handsome new library.

When next I came to Toledo, I was an Ohioan — at that time provost of the University of Cincinnati, and now quite familiar with the municipal universities which this state so wisely founded in 1870. In fact, Cincinnati was at that time the only survivor of the municipal program — and soon to convert, as Toledo and Akron had earlier had done, to fully state-supported status. Soon after I came to Ohio, several of us convened the chief academic officers of our 12 institutions. We thereafter met regularly three times a year. I would be disappointed to learn that this group no longer gathers — though I am more than a decade away from Ohio. We used to rotate our meetings among the campuses. When Toledo's turn came, President Glen Driscoll was our most gracious host for luncheon. What I especially recall was his remark, to a group of academic vice presidents, how fondly he recalled his years in a similar position, and how much he enjoyed visiting with a group like ours. It is that recollection (and others from later times) that made me so pleased to see his name on the splendid new Continuing Education Center. Surely his contribution to the University and Ohio higher education beyond should be so recognized.

This visit marks my third, and offers a chance to express appreciation to President McComas — a colleague whom I have known and with whom I have worked as our paths have crossed in various parts of the country. I was pleased to learn of his coming to Toledo, and I gather from all reports that he has established his mark in the traditions of the two predecessors of whom I have just spoken.

It is, however, another part of the University's history that suggests a theme for this morning. Just 70 years ago this spring, the attention of the American academic community turned to The University of Toledo. Two years earlier, a young economist named Scott Nearing had been dismissed by the University of Pennsylvania for having made "utterances (that) were unsound and caused criticism outside the university." He was also charged by Penn with a lack of "professional gumption" — a rather curious combination of qualities. Despite his exceptional talent and scholarship, other institutions shunned the young economist. Only The University of Toledo was willing to take the risk, and offered him not only a faculty position, but also the deanship of the

College of Arts and Sciences. Nearing came to Toledo, and at first proved a highly popular teacher and administrator. He was also much sought as a speaker in the larger community, though his initial reappointment was challenged by at least one business group.

Within two years, however, there was trouble. It was Nearing's adamant opposition to America's role in World War I that stirred new controversy and brought before the Board of Trustees the question of his continuing role at the University. Before any action occurred, Nearing tendered his resignation. All the local newspapers urged the Board to accept his offer. But to its great credit, the Board refused to accede to such pressure and actually rejected the resignation. The Board's special committee on Nearing's case disputed the claim that he had brought personal opinions into the classroom — noting that on the contrary, he encouraged students to think for themselves and form their own conclusions on controversial issues.

The saga does not, however, end there. A few weeks later, when routine reappointments for the following year came before the Board, Nearing's strongest supporters were absent and his name was quietly deleted from the roster. Though many Board members privately apologized to Nearing, no attempt was made to seek his reinstatement. He never again held a regular faculty position at any other American college or university, though he remained a popular lecturer and writer throughout his life.

The theme of academic freedom holds a prominent place in The University of Toledo's early history. It is of academic freedom I thought I might speak further this morning. In so doing, I assume the choice of that theme needs no lengthy defense. Academic freedom is far more than employment security for professors. It reaches well beyond the teaching staff of an institution: students are quite as much as faculty the beneficiaries of a commitment to academic freedom. Above all, it protects the right to explore controversial issues courageously and honestly, in the classroom and the laboratory, without the pressure to forego the difficult questions that trouble society because someone might look askance at their frank discussion on and off the campus.

If commitment to intellectual liberty in the academy is a constant, the locus of that concern often shifts markedly over time. Two decades ago our concern was mainly with loyalty oaths and speaker bans — measures adopted by the state legislatures in the 1950s to allay public apprehension about subversive activities on American campuses. One by one, most such measures were either repealed or struck down by the courts on constitutional grounds. My own role at that time was as general counsel for the American Association of University Professors — a role in which I wrote or filed briefs in several successful challenges to such laws. While the decisions were often quite close — 5 to 4 on several cases in the United States Supreme Court, the outcome was clear and the demise of the traditional disclaimer-type oath was complete by 1970.

The challenges of the next decade were quite different. Ohioans with long memories may recall at least two by-products of the tragedy at Kent State. One clear threat to academic freedom was the legislation adopted in the summer of 1970 which called for the automatic dismissal of any state university professor upon conviction for any of a number of offenses on or off campus. Once dismissed, such a person could not be employed by any Ohio public institution for at least a year. Despite the unsuccessful challenge, mounted in fact by members of The University of Toledo faculty, I gather this law languishes on the statute books, its teeth never pulled, but apparently never allowed to bite.

The other fallout from Kent State was of a quite different kind. Soon after the shooting, the Portage County grand jury mounted its own investigation. Without charging any crimes, it filed a wide-ranging report which condemned the university administration for laxity and faulted several (unnamed) professors for subversion of their classrooms. When the report became public — in clear violation of Ohio law — several of the suspected faculty members brought suit in federal court. They not only won the case, but obtained an extraordinary remedy. The federal judge ordered that the original copy of the report be physically destroyed; it was, in fact, burned by the Portage County clerk early one morning in a Ravenna parking lot.

The premise of the federal judgement is more durable than the novel remedy. In one of the rare cases directly recognizing academic freedom as the basis for constitutional action, Judge Thomas concluded from the evidence he had heard: "(T)he Report is dulling classroom discussion and is upsetting the teaching atmosphere. . . When thought is controlled, or appears to be controlled, when pedagogues and pupils shrink from free inquiry at a state university because of a resident Grand Jury, then academic freedom of expression is impermissibly impaired. This will curb conditions essential to fulfillment of the university's learning purpose." So it was that the report had to be destroyed — though not before much damage had been done.

Threats to academic freedom these days are of a rather different type. Let me speak, if I may, of three kinds of threats — those involving restrictions imposed by the federal government; those of private groups who from one side of the political spectrum challenge the right to teach freely in the classroom; and those who on the other side challenge the right to speak freely on university compuses.

We might begin with the increasingly restrictive role of the federal government — not, I might add, uniquely attributable to one part or to the current administration though more troublesome in recent years. The primary burden has been on scientists and scholars in fields deemed of potential national security significance, though the full impact may be broader. On two recent occasions, scientific papers have been ordered withdrawn on the eve of presentation at international meetings because of Pentagon fears they might violate the export control regulations. Last year the Pentagon refused clearance to 13 papers at the Linear Accelerator conference: after an urgent appeal, 10 papers were eventually cleared, but 3 were simply left out of the conference. A materials science conference at UCLA two years ago had to be restricted to United States citizens because it involved unclassified technical data appearing on an export control list. In fact, since 1982 federal officials have imposed constraints on academic and scholarly conferences not fewer than 12 separate times. Several professional societies have most reluctantly decided to ban all foreign scientists from their conferences simply to avoid the risk of a government request to withdraw papers contain-

ing unclassified data. Earlier several universities, including the University of Wisconsin (of which I was then president) received requests from the State Department to curtail sharply the activities of foreign scholars — and even in one instance to deny them access to periodicals which were on open shelves in the University Library.

The effect of federal policy has been compounded in a different and subtler way. There have been growing efforts to restrict the scope of the Freedom of Information Act, though Congress has largely maintained its safeguards. There have also been moves to expand classification — most notably through the Executive Order of April, 1982 which raised significantly the threshold for what is classified. Then there was the 1983 National Security Directive which would have imposed on virtually all segments of the Executive Branch a pre-publication agreement applicable to any speech or writing based upon government work. Most recently, in response to pressure from Congress and the academic community, the new national security adviser has withdrawn a memorandum from his predecessor which would have further limited the dissemination of possibly sensitive but clearly unclassified material. Finally, there is much concern among scholars and librarians over the reduction in access to — and even existence of — certain federal data bases — *International Economic Indicators*, the *Handbook of Labor Statistics*, *American Education*, and others. There has also been a marked reduction in materials sent to deposit libraries. While the basis for these reductions may be more fiscal than substantive, concerns about the result are no less acute.

Let me turn from government to the private sector. Here there is reason for concern about pressures from both sides that jeopardize free inquiry in the academic community. On one hand there is Accuracy in Academia, a private organization which has as one of its goals the detection of bias in the classroom. Apparently the group has recruited sympathetic students to monitor certain classes and report the results to the national office. At least one report has been published, and others are thought to be in preparation.

Appraising such activity is not as easy as might first appear. On one hand, we certainly cannot object to students keeping

tabs and reporting to others a major bias they perceive in their college courses. If, for example, someone enrolled in my constitutional law course on church and state were to tell a member of the clergy that I consistently disparaged his or her faith, and that information were in turn relayed to my dean, I could hardly complain that my academic freedom had been abridged. Yet at the other extreme, the California courts rightly held unconstitutional a practice of the Los Angeles Police Department of sending undercover officers, posing as students, into UCLA classrooms to spy on professors and students suspected of subversive views.

Accuracy in Academia is troublesome because it falls between those two relatively clear cases. While the group is private, and thus quite different from the LAPD, the notion of recruiting students specifically to monitor classes and then collecting their reports outside the university is very troubling. It seems to me universities must do whatever they can to resist such pressures — short of barring students from enrolling in particular classes, which I do not believe we can do. We should be prepared to defend to the fullest any faculty member, the integrity of whose classroom is invaded in this way. Perhaps Accuracy is a cause whose time has come and gone; let us hope that is the case, though continuing vigilance is still in order.

The third kind of threat is also private. It comes from the other end of the spectrum. Campuses were plagued in the '60s and '70s by a kind of incivility — at times almost inhumanity — from those who would tolerate only one particular point of view. They took extreme, sometimes physical, measures to stifle variant viewpoints. We condoned such violations of academic freedom and free expression because we felt largely powerless to act against them; that period is not one on which the academic community can reflect with any sense of pride. Recently such repressive measures have reappeared on some campuses. The targets this time have been officials of Nicaragua, Supreme Court Justices, the U.S. ambassador to the United Nations, and other federal officials, private citizens like Eldridge Cleaver, and others whose views are abhorrent to some in the academic community. Targets of this new intolerance have included publications and teaching materials viewed as sex-

ist, racist, or insensitive to ethnic groups within our diverse national population.

While the measures taken to stifle speech have been less violent than those of the '60s, they threaten no less our concept of the university as a forum for free and open discourse. We know that academic freedom is an extremely fragile concept — as delicate and as easily imperiled as it is vital to the pursuit of truth and the expansion of knowledge. We also realize that it may be endangered as much by those within who will not permit outsiders to speak freely as by those from without — be they legislators, government officials or private vigilantes — who would inhibit free speech in classrooms and laboratories. We can be no less concerned about threats to academic freedom from within than those from outside.

Let me return finally to the central theme of this happy day, and the honors it recognizes. There is no better protector of academic freedom than a truly liberal education of the kind you have received as students at The University of Toledo. The fact that your University saw fit, 70 years ago, to welcome a controversial professor from the East, and to provide him a classroom within which to excite and challenge students, is a part of your history which I hope all who study here will value. I also hope and trust that the liberal education and the rich diversity of courses you have experienced here will stand you in very good stead in later life. You have surely been well and thoroughly prepared for responsible citizenship as well as for professions and occupations which many of you will soon enter. The heritage of the institution is a rich and varied one, and is in turn enriched by those who have taught and studied here. So, as you receive honors today, I hope you will not only enjoy the tribute which accompanies those honors, but will recognize the degree to which you have contributed to the life of your University. In so doing, you have also enhanced the legacy of academic freedom which transcends institutions, disciplines, and even generations. It is truly a timeless quality.

Let me close with congratulations to the honorees, to their families and friends, and to The University of Toledo for claiming you among its student body.